

S.B. CIVIL MISC. APPEAL NO.902/2006
(Smt.Ayodhya Devi & ors. Vs. RSRTC & anr.)

DATED : 10.07.2006

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Ravi Bhansali for the appellants.

By way of this appeal against the award dated 26.07.2004 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.171/2004; the claimant-appellants seek enhancement over the compensation amount of Rs.3,07,000/- awarded by the Tribunal on account of accidental death of Shri Onkar Lal, husband of the appellant No. 1 and father of the appellants Nos. 2 to 4.

On 19.10.1996 the deceased Onkar Lal, while riding his moped with his wife claimant No.1 on Bhilwara-Pur Road and in the process of crossing, sustained grievous injuries on being hit from behind by a bus bearing registration No. RJ 24 P 271 belonging to Rajasthan State Road Transport Corporation and driven by non-applicant No. 2, Shafi Mohammed; and succumbed to the injuries on 28.10.1996 while undergoing treatment at Ahmedabad.

The present appellants claimed compensation in the sum of Rs. 9.66 lacs on account of death of Onkar Lal stating

his age at 54 years, being engaged in government service on the post of Land Record Inspector. The learned Judge of the Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid bus bearing registration No. RJ 24 P 271 and held the respondents liable for compensation. While taking up quantification of compensation, the learned Judge observed that the deceased was getting net salary at Rs. 5,525/- at the time of death; was likely to retire from the service on 30.06.2000 and at the time of retirement his basic salary would have been Rs. 7,300/- per month. The learned Judge took the loss of contribution at Rs.5,500/- per month and observed that the deceased would have served for another three years and eight months and on that basis calculated pecuniary loss at Rs.2,42,000/- (this figure seems to have been arrived by multiplying Rs.5,500/- by 44 i.e. the number of months of service remaining). The learned Judge further observed that Rs.20,000/- were spent in treatment, Rs.5000/- on the relatives, Rs.20,000/- on funeral expenses and Rs.20,000/- were to be allowed towards loss of consortium. In this manner the Tribunal has made the award in the sum of Rs.3,07,000/- in favour of the claimant-appellants and has allowed interest at the rate of 6% per annum from the date of application.

Learned counsel appearing for the appellants has contended that the Tribunal while calculating pecuniary loss has not taken into consideration the rise in salary income on its revision after Fifth Pay Commission and the Tribunal has also not taken into consideration the dearness allowance and has not applied correct multiplier of 11 and has not awarded non-pecuniary loss to the children and, therefore, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel also submitted that the Tribunal has erred in awarding interest only at the rate of 6% per annum.

Having examined the considerations adopted by the Tribunal and the award in its totality this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The deceased was 54 years in age and the method of calculation adopted by the Tribunal for arriving at an average income of Rs.7,800/- per month is obviously incorrect. The Tribunal has observed that the salary of deceased was Rs.6,090/- at the time of his death and after deductions, he was getting Rs.5,525/- per month and at the time of retirement, he would have been getting basic salary at Rs.7,300/- per month but then has observed that the average of the two comes to Rs.7,800/- per month. The average of the figures

stated by the Tribunal of 5525 and 7300, on any calculation, could not have been 7800.

Then, the Tribunal has purportedly deducted one-third on the personal expenditure of the deceased though the fact remains that the deceased was 54 years in age and the sons of the deceased were 33 and 27 years in age and the married daughters were respectively 30 years and 24 years in age. In such a family set up, personal expenditure could have been even higher than one-third.

Significantly, the claimant No. 1, wife of the deceased, has admitted that her son has been accorded compassionate appointment in his place.

The contention of the learned counsel against the impugned award about not taking into consideration dearness allowance and likely revision of salary and application of lower side multiplier less than 4; and the submissions for allowing multiplier of 11 on the higher figure of multiplicand cannot be accepted in the fact situation of the present case inasmuch as the ultimate figure of pecuniary loss has been arrived at by the Tribunal after adopting Rs.7,800/- as the average salary and taking loss of dependency at Rs.5500/- per month and then multiplying it by the total number of months of service remaining. The calculation by the learned Judge of the Tribunal has of course been haphazard but nevertheless the

multiplicand has been adopted on higher side in favour of the claimants; and in the family set up the deduction for personal expenditure of the deceased ought to have been higher than one-third. Further, when viewed with the relevant facts including that of compassionate appointment of son of the deceased in his place, this Court is satisfied that the pecuniary loss calculated by the Tribunal of Rs.2,42,000/- is definitely higher than moderate.

Learned counsel has argued that non-pecuniary loss has not been allowed to the children. The impugned award shows that apart from allowing Rs.20,000/- towards treatment expenditure, the learned Judge of the Tribunal has allowed Rs.20,000/- towards funeral expenses and such amount remains on much higher side. Similarly, the wife of the deceased has been allowed Rs.20,000/- for loss of consortium that also remains higher than reasonable and strangely an amount of Rs.5,000/- has been allowed for having been spent on relatives. When the award is stated for reasonable figures towards non-pecuniary loss for the claimants and funeral expenses; and the excessive figures stated by the Tribunal are rationalised, the award of just compensation cannot exceed the figure already allowed by the Tribunal. The rate of interest at 6% per annum cannot be said to be inadequate in the fact situation of the present case.

The upshot of the discussion aforesaid is that the amount awarded by the Tribunal remains not lesser than a just compensation in this case and there is no scope for upward revision.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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